

IP 05-1475-C H/L Zurwell v Colgate-Palmolive
Judge David F. Hamilton

Signed on 12/21/07

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

LOIS M. ZURWELL,)	
)	
Plaintiff,)	
vs.)	NO. 1:05-cv-01475-DFH-WTL
)	
COLGATE-PALMOLIVE COMPANY,)	
HILL'S PET NUTRITION, INC.,)	
)	
Defendants.)	

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

LOIS M. ZURWELL,)	
)	
Plaintiff,)	
)	
v.)	
)	CASE NO. 1:05-cv-1475-DFH-WTL
COLGATE-PALMOLIVE COMPANY and)	
HILL'S PET NUTRITION, INC.,)	
)	
Defendants.)	

ENTRY ON DISCOVERY APPEALS AND MOTION TO EXTEND BRIEFING

Plaintiff Lois Zurwell alleges that her former employer and its parent company violated Title VII of the Civil Rights Act of 1964 by discriminating against her on the basis of sex and retaliating against her, and that they also violated the Family and Medical Leave Act. The court has before it two appeals by plaintiff (Docket Nos. 74 and 83) from decisions of Magistrate Judge Lawrence regulating discovery. Also pending is plaintiff's ninth motion for enlargement of time to respond to defendants' motion for summary judgment. As explained below, the court affirms Judge Lawrence's decisions and grants in part one final enlargement of time to respond to the motion for summary judgment.

The original case management plan provided for seven months to conduct discovery. Over repeated objections by defendants, Judge Lawrence granted plaintiff three 60-day extensions of time to conduct discovery, finally ordering that discovery be completed by February 3, 2007 (which was a Saturday, so the extension was at least arguably valid through the next business day, Monday February 5, 2007). On February 5th, plaintiff filed a fourth motion for extension. Judge Lawrence denied that motion on February 7, 2007. On February 6, 2007, Judge Lawrence also granted defendants' motion for a protective order to prevent plaintiff from resuming the deposition of witness Shelly Culbertson.

Plaintiff moved for reconsideration of both orders, and on May 9, 2007, Judge Lawrence denied both motions to reconsider. Docket No. 71. Pursuant to 28 U.S.C. § 636(b)(1)(A), Fed. R. Civ. P. 72, and Local Rule 72.1, plaintiff has appealed the denial of those motions. Docket No. 74.

On June 14, 2007, Judge Lawrence issued a separate order denying plaintiff's request for a further extension of discovery, though he allowed plaintiff to take one additional deposition, of Terry Abner. Docket No. 80. Plaintiff has also appealed that decision. See Docket No. 83.

Under section 636(b)(1)(A) and Rule 72, in appeals from a magistrate judge's rulings on non-dispositive matters, the question is whether the rulings are "clearly

erroneous or contrary to law.” The court has reviewed the unusually voluminous and repetitive briefing on these discovery disputes. The court is also aware, as Judge Lawrence is aware, of the long history of unusually contentious litigation and discovery between these defendants and several other plaintiffs represented by the same plaintiffs’ attorney in related cases. Pretrial proceedings in this series of cases have tried the patience of Judge Lawrence and others and have consumed a disproportionate share of judicial time in this district.

This court finds nothing erroneous or contrary to law in Judge Lawrence’s decisions. Judge Lawrence extended three times the time that plaintiff had requested and been allotted for discovery. The judge would have acted within his discretion if he had granted no extension or only one extension. The record shows that he was patient and gave plaintiff a further opportunity to show specific needs for additional and belated discovery. He was not persuaded that the showing had been made. He considered plaintiff’s arguments and exercised sound discretion in managing discovery and finally putting an end to discovery so that this case can be brought toward a conclusion. See generally *Spears v. City of Indianapolis*, 74 F.3d 153, 157 (7th Cir. 1996) (finding no abuse of discretion in district court’s decision to enforce deadline for responding to summary judgment motion).

Plaintiff has argued that she was entitled to the extensions as a matter of right because of defendants’ alleged wrongdoing in discovery. The court disagrees.

The record shows friction and delays, but the magistrate judge reasonably accommodated those problems by granting the plaintiff's earlier requests for extensions. Plaintiff had ample opportunity to bring any remaining problems to the attention of the court in a timely fashion rather than waiting (several times) until the last minute to seek more time. Her arguments also overlook the fact that she had seven months to conduct discovery under the original case management plan. Plaintiff also filed no motions to compel, so the court did not compel any additional discovery that might have justified a further extension of time.

Plaintiff has argued that a small quantity of late-produced documents should entitle her to continue the Culbertson deposition and to take some additional depositions. Judge Lawrence gave plaintiff an opportunity to explain in detail the linkage between the documents and the additional discovery she seeks. See Docket No. 80. He was not persuaded there was good cause to extend the time further. The documents appear to be routine; the links to the particular witnesses sought to be deposed were not compelling. This court sees no abuse of discretion or clear error in that judgment.

Plaintiff's most interesting argument is that the magistrate judge erred by denying her fourth motion for extension of time for discovery because he had not previously warned that an earlier extension would be the last. Plaintiff argues that the practice in this district is to provide such a warning. See Docket No. 83

at 6; Docket No. 82 at 10. Such warnings are not required under any rule or law of which this court is aware. Plaintiff is arguing, in effect, that each time a judge of this court grants an extension of time without adding to the tendered order an explicit warning that no further extensions will be granted, the moving party is entitled as a matter of right to at least one more extension. That is not the law. If plaintiff's position were adopted, it would be much more difficult to manage the court's docket. Judge Lawrence did not err when he finally denied these requests for still more time and more discovery.

The court also finds no error in the decision barring a resumption of the deposition of witness Culbertson. Plaintiff's counsel had ample opportunity to question Culbertson. He was aware during the deposition of time limits imposed by the witness's schedule, which defense counsel and the witness agreed to extend by an hour, while also foregoing the usual break for lunch. The transcript also shows that plaintiff's counsel devoted a great deal of time to matters of marginal or no relevance. Judge Lawrence considered this issue carefully. He did not abuse his discretion or clearly err in granting the protective order and later denying plaintiff's motion to reconsider.

Accordingly, the court affirms Magistrate Judge Lawrence's decisions entered on May 9, 2007 and June 14, 2007.

Finally, plaintiff has filed her ninth motion for an extension of time to respond to the defendants' motion for summary judgment. Docket No. 99. Defendants object, but part of plaintiff's rationale was the pendency of these appeals from the magistrate judge and the hope of securing more discovery. The appeals are now resolved. Plaintiff's ninth motion is granted in part. She shall file her response no later than Friday, January 11, 2008. Although such warnings are not required, as explained above, plaintiff and her counsel should understand that, absent circumstances that are both extraordinary and unforeseeable, there will be no further extensions of that deadline. See *Spears v. City of Indianapolis*, 74 F.3d at 157-58 (affirming grant of summary judgment after district court denied third extension of time and struck opposition papers that were filed one day past the deadline). In addition, plaintiff should not expect any routine extension of time to file any surreply brief that might be allowed under Local Rule 56.1(d).

So ordered.

Date: December 21, 2007

DAVID F. HAMILTON, JUDGE
United States District Court
Southern District of Indiana

Copies to:

Ellen E. Boshkoff
BAKER & DANIELS
ellen.boshkoff@bakerd.com

Richard L. Darst
COHEN GARELICK & GLAZIER
rdarst@fed-law.com

Susan W. Kline
BAKER & DANIELS
swkline@bakerd.com

Joseph C. Pettygrove
BAKER & DANIELS
joseph.pettygrove@bakerd.com